

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT
OF HARRISON COUNTY, MISSISSIPPI

LEIGHANN GONZALEZ

PLAINTIFF

VS.

CAUSE NO.

A2401-17-281

FILED
DEC 27 2017
CONNIE LADNER
CIRCUIT CLERK
BY: [Signature] D.C.

COASTAL INDUSTRIAL CONTRACTORS, INC.
CLAYTON T. HARMER AND AMERISURE MUTUAL
INSURANCE

DEFENDANTS

COMPLAINT

COMES NOW, the Plaintiff, Leighann Gonzalez, and files this Complaint against the Defendants, Coastal Industrial Contractors, Inc., Clayton Harmer, and Amerisure Mutual Insurance and for grounds in support of her claims for relief sought herein, the Plaintiff would respectfully show unto this Honorable Court the following matters and facts, to wit:

PARTIES

1. The Plaintiff, Leighann Gonzalez, is an adult resident of Harrison County, Mississippi.

2. The Defendant, Coastal Industrial Contractors, Inc. (hereinafter "Defendant Coastal") (Business ID 735026), is a business corporation incorporated in the State of Mississippi whose physical address is 17527 Highway 67, Biloxi, MS 39532. This Defendant can be served with process by affecting the same upon its registered agent, Carlie N. Willams, 17527 Highway 67, Biloxi, MS 39532.

3. The Defendant, Clayton T. Harmer, (hereinafter "Defendant Harmer") is an adult resident citizen of Stone County, Mississippi, who may be served with process of this Court at his place of residence, 6 Country Oaks Road, McHenry, Mississippi 39561, or wherever he may

be found.

4. The Defendant, Amerisure Mutual Insurance (hereinafter “Defendant Amerisure”) (Business ID 02729N), is a domestic profit corporation incorporated in the State of Michigan and whose physical address is 26777 Halsted Road, Farmington Hills, Michigan 48331. This Defendant can be served with process by affecting the same upon its registered agent, Susan Gailey Vincent, 26777 Halsted Road, Farmington Hills, Michigan 48331.

JURISDICTION AND VENUE

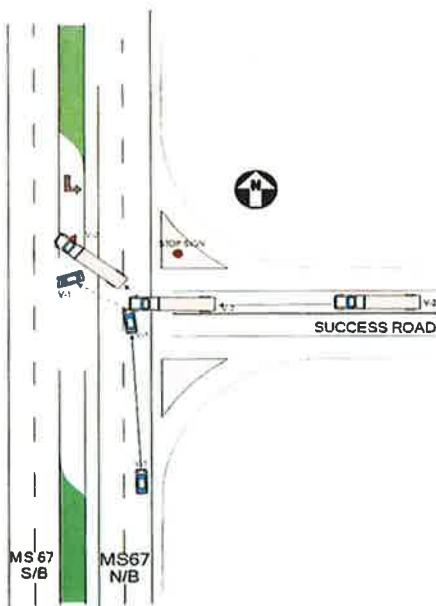
5. This Court has jurisdiction of the parties and the subject matter of this Complaint, pursuant to *MCA* § 9-9-21 (as amended), and pursuant to Mississippi law.

6. Venue is proper in Harrison County, Mississippi, pursuant to *MCA* § 11-11-3 (as amended), and pursuant to Mississippi law as the collision occurred in the First Judicial District of Harrison County, Mississippi.

FACTS

7. On or about June 13, 2017, the Plaintiff was traveling north on MS Highway 67, in D’iberville, Mississippi, Mississippi. Highway 67 is a four lane highway in which Success Road intersects and “T-bones” into MS Highway 67 in the First Judicial District of Harrison County, Mississippi. Stop signs are erected on Success Road requiring the traffic to come to a complete stop and yield to traffic traveling on Highway 67. At all times relevant to this action, Plaintiff was acting in a proper and safe manner, consistent with the laws of the State of Mississippi. Plaintiff was driving her 2016 Honda Civic vehicle northbound on MS Highway 67 when she was struck by an 18 wheeler tractor trailer driven by Defendant Harmer as he was speeding and traveling westbound on Success Road towards MS Highway 67.

8. The Defendant Harmer failed to stop at the stop sign at the intersection of MS Highway 67 and Success Road. On said date, Defendant Harmer with his eighty thousand pound vehicle negligently crashed into the front end of the Plaintiff's less than three thousand pound vehicle causing severe damages and injuries to the plaintiff and her vehicle. At all times relevant to the crash, Defendant Harmer had a duty to keep a proper lookout, stop at stop signs, yield to traffic on a state public highway from a secondary road, drive at a safe rate of speed, keep his vehicle under control, and keep his eyes on the road at all times while driving. At the aforesaid time and date Defendant Harmer failed to abide by any of the duties alleged and thereby caused the crash, injuries and damages as stated.



COUNT I

NEGLIGENCE/GROSS NEGLIGENCE AS TO CLAYTON HARMER

9. The allegations of the foregoing paragraphs are hereby incorporated by reference as if fully set forth herein.

10. Notwithstanding this duty, Defendant Harmer, did negligently and recklessly

operate his vehicle in such a manner as to cause it to collide with Plaintiff's vehicle.

11. Defendant Harmer, but for his and his employer's reckless negligent actions and omissions, the crash and collision would not have occurred. The negligence was the direct and proximate cause of the crash and collision which caused the Plaintiff's injuries and damages. Further Defendant Harmer violated the rules of the road and breached his duties to Plaintiff in in the following particulars:

- a. in negligently failing to control the movement and momentum of his vehicle;
- b. in negligently failing to exercise reasonable care in the operation of his 18 wheeler tractor trailer vehicle;
- c. in negligently failing to maintain a proper lookout;
- d. in negligently colliding into Plaintiff's vehicle;
- e. in negligently driving his 18 wheeler tractor trailer vehicle in a reckless manner and failing to yield to the highway traffic on a public state highway;
- f. in negligently failing to stop at a designated stop sign intersection;
- g. in negligently speeding at an excessive rate and in a disregard for the rights of others such as Leighann Gonzales;
- i. in negligently failed to maintained the said vehicle and equipment in a safe and proper order to be used on the public highways; and
- j. in negligently failing to exercise reasonable care in operating his eighteen wheeler tractor trailer weighing approximately eighty thousand pounds on the road with vehicles of less than three thousand pounds;

k. in negligently texting and failing to maintain a proper lookout and control of his approximately eighty thousand pound 18 wheeler tractor trailer;

12. Upon information and belief Defendant Harmer has failed and violated the Federal Rules and regulations of the CFR. Since Defendant Coastal is an interstate carrier, the Defendants are regulated by the Federal Rules and Regulations of the Federal Department of Transportation. The negligent acts or omissions of Defendant Harmer were both violations of State and Federal laws and breaches of duties owed to Plaintiff, which directly and/or proximately caused all of the injuries and damages sustained by Plaintiff.

**NEGLIGENCE/GROSS NEGLIGENCE AS TO
COASTAL INDUSTRIAL CONTRACTORS, INC.**

13. The allegations of the foregoing paragraphs are hereby incorporated by reference as if fully set forth herein.

14. The Defendant, Coastal Industrial Contractors, Inc., is an interstate carrier, and in addition to being subject to the laws and Rules of the Road of Mississippi is required to comply with the U.S. Code of Federal Regulations.



15. Said Defendant has failed to comply with §383.110, §383.111, §383.113 e-CFR, as well as, failed to see that Defendant Harmer, was properly trained and qualified to drive said vehicle in order to avoid said type crash with the Plaintiff.

16. Said Defendant is therefore vicariously liable for the actions and omissions of Defendant Harmer, who was its agent, servant, and employee of said Defendant. At the time of the collision and crash Defendant Harmer was acting in the course and scope of his employment of Coastal Industrial Contractors, Inc.

17. The Defendant, as the owner of the 18 wheeler tractor trailer has maintained certain recording equipment on said vehicle known as the “black box” which records the speed, reaction time of the driver, and what occurred both prior to the collision and afterwards. The Defendant was given notice immediately after the collision to preserve and secure said equipment and data. It is believed that they have in violation of said request, allowed a third party, namely Amerisure, to have said equipment and data.

18. Because of this Defendant’s actions, omissions, and reckless disregard of the rules and regulations by failure to employ and maintain qualified drivers, this Defendant is not only liable for all compensatory damages but that punitive damages should also be assessed against said Defendant.

19. The injuries, harm, and damages were incurred by Plaintiff as a result of the use of the vehicle by Defendant Harmer in a negligent and reckless manner, which because of inexperience prior actions, and lack of training, the Defendant Coastal knew, or had reason to know, Defendant Harmer was likely to be involved and an unreasonable risk of harm to others while driving said vehicle.

20. Defendant Coastal, as the employer of Defendant Harmer, had the right to permit and the power to prohibit the use of this tractor trailer by Defendant Harmer.

21. Defendant Coastal knew, or had reason to know, that Defendant Harmer because of inexperience, lack of training, and/or prior actions, was likely to drive his truck in a negligent and reckless manner.

22. As a direct result of Defendant Coastal negligently entrusting Defendant Harmer, who operated said vehicle owned by Defendant Coastal in a negligent and reckless manner, the Plaintiff, without any contributory negligence, did suffer and incurred the injuries, damages, and harm enumerated in this Complaint.

23. Defendant Coastal had a duty to use reasonable care to select an employee who was competent and fit to perform the duties required as an employee. Defendant Coastal owed such duty to Plaintiff and such duty was breached.

24. Defendant Coastal knew, or should have known, that Defendant Harmer would be likely to operate a motor vehicle in a negligent and reckless manner.

25. Defendant Coastal knew, or should have known, that Defendant Harmer was not competent or fit for the duties required of him as an employee. Defendant Coastal breached their duty to use reasonable care to select and retain an employee that was competent and fit for the position.

26. As a result of Defendant Coastal's negligence in hiring, failing to properly train, and retaining Defendant Harmer, Plaintiff was injured as alleged.

27. The above-described acts of Defendant Harmer were committed while he was acting as an agent, servant, and or employee of Defendant Coastal.

28. The above-described acts of Defendant Harmer were committed within the scope of his agency and while furthering the business interests of Defendant Coastal.

29. As the principals for Defendant Harmer, Defendant Coastal is responsible for all of the acts committed by Defendant Harmer within the scope of his agency.

**NEGLIGENCE/GROSS NEGLIGENCE
AS TO AMERISURE MUTUAL INSURANCE**

30. The allegations of the foregoing paragraphs are hereby incorporated by reference as if fully set forth herein.

31. The Defendant Amerisure, had contracted with the Defendant Coastal, to insure that their drivers such as the Defendant, Harmer, are qualified and maintains a Class A commercial license. Further, said Defendant is employed to check the driving records of its drivers such as Defendant Harmer, for any moving violations in order to confirm that they may maintain their commercial license and drive the vehicles owned and operated by Defendant Coastal. Defendant Amerisure, but for it and Defendant Coastal's reckless negligent actions and omissions of maintaining surveillance or lack thereof, Defendant Harmer would have been removed or properly trained and the crash and collision would not have occurred. The Defendant's negligence and omissions were the direct and proximate cause of the crash and collision which caused the Plaintiff's injuries and damages, and or at least contributed to them.

32. Further the Defendant Amerisure has obtained the Plaintiff's vehicle with the data and black box of the recordings of the collision prior to and during the crash. It further has control over the same black box of the Defendant's vehicle and data. Plaintiff has put these Defendants on notice to maintain this evidence; however, they have failed and/or refused to forward any of the data to the Plaintiff or her counsel. Plaintiff would be irreparably harmed if

the Defendant has destroyed said evidence. Plaintiff would be required to invoke the Doctrine of Spoliation and thereby seeks damages directly from Defendant Amerisure. This Defendant actually has an interest in said lawsuit but is not under the control of this court if not named herein.

COUNT II

COMPENSATORY DAMAGES

33. The allegations of the foregoing paragraphs are hereby incorporated by reference as if fully set forth herein.

34. As a sole direct and proximate result of the negligent conduct of Defendants, Plaintiff has suffered property damage, bodily injuries and has incurred reasonable and necessary medical bills and expenses in an amount in excess of the minimum jurisdictional limits of this Court. Plaintiff has incurred and lost income in excess of \$600,000.00. Furthermore, Plaintiff likely will incur reasonable and necessary medical bills and expenses in the future.

35. As a further direct and proximate result of the negligence and/or negligence per se of Defendants, Plaintiff has incurred substantial physical pain and suffering, permanent injuries, mental anguish, and emotional distress, in the past and will incur future physical pain, and mental anguish all in an amount in excess of the minimum jurisdictional limits of this Court and to be determined by a jury. Plaintiff has incurred loss of income, both past, present, and future and that she has lost the capacity of earning and being employed in the position and profession as an MRI Technologist. Plaintiff is presently scheduled for additional surgeries. Plaintiff is required to have health care services as she is unable to care for herself while waiting to return for additional hospital services. Plaintiff's mother, who is a registered nurse, was laid off as a result of her needing to be available to give her daughter the professional services that are needed

at this time.

36. Plaintiff is entitled to Judgment against the Defendants in the amount allowed by the Mississippi Constitution of 1890 §24, 31, and an amount in excess of five million dollars in compensatory and punitive damages.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Plaintiff Leighann Gonzalez, demands a judgment against the Defendants awarding the Plaintiff the following:

- a. Actual and compensatory damages in an amount to be determined by a jury;
- b. Past, present, and future medical expenses, loss of wages, and other economic damages;
- c. Attorney's fees, court cost, pre-and post-judgment interest, and related expenses; and
- d. Any other relief to which the Plaintiff may be entitled.

RESPECTFULLY SUBMITTED, THIS the 21st day of December, 2017

LEIGHANN GONZALAZ, PLAINTIFF

BY: 
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